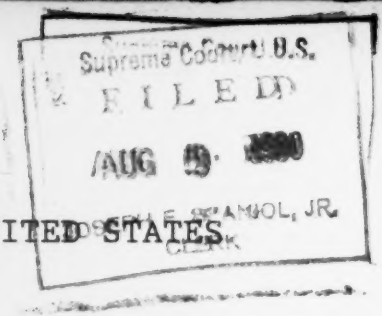
(1)

90-265

Case No.



IN THE SUPREME COURT OF THE UNITED STATES

AUGUST 1990

PETER G. STACK,

Petitioner-Appellant,

VS.

Nos. 89-1108, 89-1368, 89-2461

UNITED STATES OF AMERICA,

Respondent-Appellee,

Appeal from the United States District Court for the Central District of Illinois, Danville Div.

No. 88 C 2197

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Date: 08/08/90

Peter G. Stack (Pro Se)

20 Pinetree Court

Palm Harbor, Florida 34683

(813) 786-3351

QUESTIONS

1.) When is an attorney responsible for the advice he gives, rather than always saying the client ultimately didn't have to take it?

2.) Shouldn't there be a minimum standard of competency for attorneys?

3.) Didn't the Court of Appeals in this matter overlook, for whatever reasons, errors that should have resulted in the vacation of the original judgement of the district court both in the original proceedings and the district court's judgement of the 2255, which was the relief sought by the court of appeals court?

INDEX

TABLE OF AUTHORITIES

Cases:

STATUTES

OTHER AUTHORITY

IN THE SUPREME COURT OF THE UNITED STATES

AUGUST 1990

No.

PETER G. STACK, Petitioner

v.

UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The judgement and order of the court of appeals for the seventh circuit dated 01/18/90, is found in the appendix marked APP. 1 and APP.2. The order of the district court dated 11/15/88, is found in the appendix marked APP.3..

JURISDICTION

The matter was brought to the Court

of Appeals for the Seventh Circuit pursuant to 28 U.S.C. Section 1291. A "Judgement-Without Oral Argument" of the Court of Appeals was entered on January 18, 1990. A "Petition for Rehearing" was timely filed on January 31, 1990. On March 13, 1990, the "Petition for Rehearing" was denied. Three days later, March 16, 1990, the "Mandate" was issued. F.R.A.P. 41.(a) states mandate is issued seven days after entry of order denying the petition for rehearing. The time for filing a petition for writ of certiorari was to expire on June 13, 1990. On June 1, 1990, I filed with this Court an "Application For Extension Of Time For Filing Petition For Certiorari To The United States Court Of Appeals For The Seventh Circuit". On June 5, 1990, Justice Stevens, signed an "Order" extending the time to and including August 10, 1990.

The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS

The Sixth Amendment of the U.S. Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fifth Amendment of the U.S. Constitution states:

> No person shall be held to answer for

a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT

Please realize that I have not been trained as intensively as a lawyer has. But rather, at this point, have been self taught. Nor do I work at recognizing the subtleties of legal questions for more

than forty hours a week, as lawyers and judges do. Therefore, in reading the following this court with all of it's experience and expertise should be able to readily ascertain that I have done the right thing in bringing it to it's attention.

(1.) 10/12/83...Complaint filed on information supplied to authorities by two individuals both employed either at the time or previously in intimate positions by the alleged victim, G. Dean Cooper, who, at that time, was serving a four year sentence on a state level for a securities fraud matter. At that time, one of the aforementioned employees had an ongoing relationship with the U.S. Postal Inspector's Office with whom she was having contact regarding her client, G. Dean Cooper, which brought me to the attention of the Postal Authorities. Between 9/16/83 & 10/12/83, a total of

sixteen calls were placed wherein statements were made to an attorney in a presumably confidential atmosphere which were to be made to a client regarding an undisputed debt, with a total time of 108 minutes. "There is no evidence or indication that these threats were ever communicated to Dean Cooper or that Kris Fischer ever believed them to be serious threats." [R. Final Disposition 05/16/84 pge. 27 lines 6, 7, & 8.]

Only two calls were recorded. [*app 3 , record on 2255 (Exb. S) filed on 07/22/88, record on 2255 (Exbs. J, J1, J2, J3,)]

I, Peter G. Stack, was then charged under U.S. Title 18, Section 875(b), threatening communication in interstate commerce with intent to extort. [*app 1], [Exb. M & S, 2255 Pldgs.]

(2.) 10/12/83...I was arrested without incident, and am a white male who at time

of arrest was 31 years of age. [*app 1] It was alleged that I was "armed and dangerous" which was false. This was done to "effect a quick arrest", I was told by AUSA, Frances Hulin, on or around 04/09/87.

(3.) The U.S. Attorney in the Central Dist. of Illinois recommended a fifty thousand dollar bond. [*app 1]

(4.) At the time of arrest I had no prior criminal record, and I am not a member of organized crime. [*app 2, line 18, 19 & 2255 filing, "exb. G", filed 6/8/88]

(5.) Two days after arrest, 10/14/83, a $25,000.00, twenty-five thousand dollar cash/surety bond was set. [*app 3 & 4, lines 14 & 15]

(6.) Alleged threats came about in the process of collecting on an undisputed invoice/claim. [*app 4, line 9 thru 11]

(7.) Thirteen days after arrest 10/25/83, I was Indicted on four counts in violation

of Title 18, U.S.C., Section 875(b), with telephonic communications, each containing a threat to injure the person of someone. Summons was ordered. Indictment or integrity of information which resulted in indictment was never addressed by counsel. [*app 3 , record on 2255 (Exb. T) filed on 07/22/88]

(8.) On 11/03/83, I was Arraigned, appeared without counsel and a plea of not guilty on all counts was entered. [*app 3]

(9.) After travelling from the Middle District of Florida, to the Central District of Illinois and while appearing for arraignment my bond was still held at $25,000.00 cash/surety. [*app 3]

(10.) On 11/09/83, I appeared in court with attorney Thomas Bruno and entered a plea of not guilty. [*app 3]

(11.) On 11/18/83, a Hearing was held on a Motion to enlarge bond, Frances Hulin, AUSA, for Gov't, Thomas Bruno for

defendant. DEFENDANT NOT PRESENT.... WITH NO WAIVER OF DEFENDANT'S PRESENCE FILED. [*app 3]

(12.) On 11/21/83, three days after aforementioned hearing and twelve days after last arraignment, at 2:30 p.m., I appear for further arraignment with attorney Michael Dorsey who was not my counsel. [*app 5, lines 13 thru 24 & app 6]

Also on 11/21/83, memo from Mike Dorsey to Tom Bruno written stating that I, Stack, did not want to plead guilty yet after his conversation with the Postal Inspector. I did not understand the details of the plea. Discussion existed with Postal Inspector by an attorney who didn't represent me and had no background on me and/or my case. Memo states conversation with prosecutor both in person and telephonically by same attorney. This attorney in aforementioned

memo mentions a possible malpractice case against himself. Finally attorney Dorsey, in same memo makes statement he didn't want to talk me into guilty plea. [*app 6 & record, Exbs in support of 28 U.S.C. Section 2255 filed on 05/13/88]

(13.) On 11/23/83, at 10:20 a.m., less than 44 hours after last appearance I appear in court with Thomas Bruno, retained counsel. Court attempts, without success, to lead me into guilty plea, then after brief conference with attorney Bruno, I state, "In answer to your question, yes." [see Exb. U, Exbs in support of 28 U.S.C. Section 2255 filed on 07/22/88]

(14.) On 11/23/83, court states existence of possible mitigation with respect to my position. [see record Exbs in support of 28 U.S.C. Section 2255 filed on 07/22/88, Exb. U]

(15.) 11/23/83, after pleading guilty bail

reduced to $5,000.00. Order entered for refund of excess bail of $20,000.00. [*app7]

(16.) 1/11/84, Sentenced to 20 yrs. impr. and for study under 18:4205(d), report to be furnished court within 3 months & defendant to be returned to court. [*app 8]

(17.) 5/16/84, Defendant brought back to court and resentenced to five years probation; general conditions. [*app 8]

(18.) At that time and after review of "Study" done during period of incarceration said study was paraphrased by AUSA stating, "He is a thirty-one year-old whose behavior in the evaluation report of the classification study from Tallahassee is excused because of his immaturity and his poor judgement" and also stated "the crime is certainly minimized,". The AUSA also states that "I encourage the court not to lose sight of

the fact in the impact of the crime as they are pointed out in the presentence report." Subsequently she states, "The fact that Mr. Stack had the ability to do harm to Mr. Cooper within the prison." This is not borne out by the record. No such evidence of my ability to carry out threats exists. [*app 10 & 11, record Final Disp. 5/16/84 line 25 pge. 24 & lines 1 thru 6 page 25]

(19.) 5/13/88, Motion under 28 U.S.C. Section 2255 filed by defendant. [*app 9]

(20.) 5/17/88, Order to Respond entered. [*app 9]

(21.) 6/13/88, Objection to Motion for Additional Time Filed with two exhibits in support evidencing threat made to me by an attorney through an attorney, which as of this writing was never sustained or overruled. [*app 12 & 13]

(22.) 8/12/88, From approximately 1200 miles away I file a Motion for Expansion

of Record by Petitioner. Along with aforementioned motion I filed a final exhibit marked "V", a certified letter to an attorney, with a proof of delivery, stating I had made discoveries regarding forms of post conviction relief that had never been suggested to me. In that letter I asked him why he never suggested them to me. That attorney handled my bond hearing and subsequent legal matters some of which included dealings with U.S. Probation. Also on 8/12/88, Government's response to 2255 motion was filed with one statement being nothing was born out by the record. [*app 14 & 15]

(23.) 11/15/88, Order filed by court denying motion under Section 2255. Then on 11/17/88 Petitioner's Motion for Expansion of Record is allowed, nunc pro tunc. [*app 16 & 17]

(24.) 11/18/88, Clerk construes letter written by petitioner as motion for

reconsideration and files same with court. On 1/4/89, court denies same. [*app 18 & 19]

(25.) 1/11/89, I file Objection to Order entered on 1/4/89. On 2/13/88 I file materials in Support of my Objection due to lack of response from court. As of this writing the aforementioned objection has yet to be addressed. [*app 20 & 21]

(26.) 2/22/89. Clerk files Judgement in a Civil Case, case number 88-2197, on courts order of 11/15/88. Clerk refiles original Notice of Appeal from 1/13/89, on 2/22/89. [*app 22 & 23]

(27.) At the time of filing my appeal I had completed approximately 98% of my sentence. [*app 8]

(28.) U.S. Court of Appeals Case No. 89-1108, docketed on 01/19/89. The District Court then filed it's judgement in the habeas action after which the District Court Clerk refiled my notice of appeal,

notwithstanding Fed. R. App. P. 4(a)(2), which was docketed No. 89-1368, on 02/24/89. On 03/06/89, these appeals were consolidated.

(29.) On 07/13/89, U.S. Court of Appeals Case No. 89-2461, docketed.

(30.) 10/27/89, "Motion to Consolidate Appeals" filed by Petitioner-Appellant, cross defendant-appellant.

(31.) 12/04/89, U.S. Court of Appeals for the Seventh Circuit, "Orders", that the "Motion to Consolidate Appeals" is "Granted", and that these appeals, 89-1108, 89-1368, and 89-2461, are consolidated for disposition.

(31.) Appeals submitted December 21, 1989.

(32.) 01/18/90, "ORDER" entered affirming appeals.

(33.) 01/31/90, PETITION FOR REHEARING filed with Clerk's office.

(34.) 03/13/90, ORDER entered denying PETITION FOR REHEARING.

(35.) Three days later on 03/16/90, MANDATE is issued.

(36.) 06/01/90, APPLICATION FOR EXTENSION OF TIME FOR FILING PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, filed with this Court's Clerk's Office.

(37.) 06/05/90, ORDER entered extending the time for filing petition for a writ of certiorari in case no. A-861, extending the time for filing to and including 08/10/90.

(38.) At this time I have been out of Federal custody for more than a year. This after fully completing a sentence. A real question arises as to whether in camera proceedings or discussions occurred on several levels wherein information supplied by various attorneys, agencies, services, bureaus and such, has resulted in this travesty.

ARGUMENT

A lawyer or judge should readily recognize the subtleties of the law. For whatever reasons the lower courts in this matter have failed to do so. Instead they have chosen to conceal them. Accordingly, because of the voluminous amount of law in this land, I'm sure this court would agree that it would not be beyond belief that ninety-five percent of the population would not know what constitutes a Federal felony. Or that an evidentiary insufficiency in a case should result in a vacation of a sentence. Attorneys who've been intensely trained and practiced for years should. With that being the case it's doubtful that an attorney whose performance was deficient would suggest an appeal to a defendant exposing his deficiency. [see APPLICATION FOR EXTENSION OF TIME TO FILE A WRIT FOR PETITION FOR CERTIORARI FILED 06/01/90]

You see many of the attorneys involved in and around me, such as the one evidenced in the aforementioned application have along with the one whose performance is in question prejudiced me and this case which brings me to you. [see MOTION TO STRIKE filed on 08/15/89, 89-1108, 89-1368]

The Court of Appeals, in it's [ORDER of 01/18/90, III] states "Stack suggests that Fischer and Federal authorities colluded to lure him, etc., etc." "Stack offers no proof". I am not an attorney, that's why I asked AUSA, Hulin, why my record showed "armed and dangerous". Her reply was to "effect a quick arrest". Why would they be in such a hurry to arrest me?

Furthermore, thirteen days passed after my arrest before I was indicted.

In point III the court in it's 01/18/90, ORDER, attempts to lead the

reader into thinking I was astute enough to consult with counsel before answering a number of the court's questions. Yet, in fact, if one looks at the critical point where the court is attempting to get me to admit to intent [see Exb. U Exbs. in support of 28 U.S.C. Section 2255 filed on 07/22/88] you'll see the court states "Go talk to your lawyer.". This after more than two pages of transcript without me freely pleading guilty, like the gentleman in the Court of Appeals citation of Key v. United States, 806 F.2d 133, 139 (7th Cir. 1986), wherein he succinctly goes;

Court: The Court now asks you, then, how do you plead to Count 1?

Key: I plead guilty, Your Honor.

Court: How do you plead to Count 4?

Key: Guilty, Your Honor.

Court: Are you doing this freely and knowledgeably of your own free will?

Key: That's correct.

You don't see that with Stack.

The Court of Appeals also in III, state in my claim that I didn't understand the nature or ramifications of the guilty plea nor did I know the options available to me are contradictory to what the record at the plea hearing shows. Let's forget what Stack says and look at the memo from Dorsey, an attorney, to Bruno, wherein it states "Stack did not understand the details of his plea; namely that he would not have any negotiating leverage after a plea to open was entered. He was reluctant; rather than do something that could cause great difficulties for him and you, (not to mention a malpractice case against me), I simply told the judge there was a medical emergency in your family." Dorsey goes on in his memo to state, "I did not know either the law or the facts in this case, and it would have been extremely unwise for me to talk him into a

guilty plea that can always be entered later anyway." This evidences, as was presented to the lower courts, a strategy of talking me into a guilty plea. I provided evidence to all courts that reasonable doubt and mitigation existed as to the existence of ineffective counsel.

Regarding the Court of Appeals statement in III, that I did not suggest that I am not guilty, and appended copies of telephone bills highlighting extortionate calls, is completely inaccurate. Rather on 06/20/88, I filed with the District Court a breakdown, with supporting phone company records, of calls with call lengths indicated evidencing sixteen documented calls totaling 108 minutes wherein statements were made to an attorney in a presumably confidential atmosphere where I was told I could speak freely. Per the complaint signed by FBI agent Weatherall on 10/12/83, only two of

these calls were recorded. Also filed with the district court on 06/20/88, in support of (12A) in my original motion I stated "note that in the attached copy of the original complaint of 10/12/83, paragraphs seven and nine , Agent Weatherall states that Postal Inspector Austrum recorded one call but not the second call that was placed a few minutes later. That means he recorded a one minute call but not a nineteen minute call immediately following. What was in that nineteen minute call? An apology, if one was necessary? Why wouldn't he have recorded it?

Furthermore, I was charged under U.S. Title 18, Section 875(b), threatening communication in interstate commerce with intent to extort. My intention was never to extort and attorney Fischer never disputed the bill. This with Cooper all the while never having the message's,

which were to have been put in legal terms, delivered to him.

When it comes to prejudice once again look at my "APPLICATION FOR EXTENSION OF TIME FOR FILING PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT" filed on 06/01/90.
If the court pleases, at it's instruction I'll be more than willing to show how various attorneys along with bureaus, departments, and such obviously colluded to prejudice me. Due to a "Black Cloud" existence, this court I'm sure will agree that either everyone in this matter is totally incompetent or things are being done intentionally. In either case I've been prejudiced and justice hasn't been served.

The Court of Appeals for whatever reason overlooked a statement I made in my brief for combined appeal 89-2461 that "evidence had been witheld but not by me".

This should have resulted in a closer look at the combined matters before it, but didn't. The memo from Dorsey to Bruno, written less than forty-eight hours before the plea. The existence or non-existence of a medical emergency in my retained counsel's family. The geographics of the court, Bruno, and myself in that forty-four hour period. There exists no evidence to my knowledge of detailed discussions with Bruno during that time period. Nor in the two sets of his files which he supplied me copies of, for which he was paid, concerning me does any readily appear. I'm not talking about a long distance telephone call, then walking into court the next day. All of this evidences an evidentiary insufficiency during the 2255, and it's appeal(s). Furthermore there is no doubt that one existed during the original proceedings which is in an untrained way what I was

attempting to point out to the court. Even the appellate process has had it's moments wherein at least twice transcript information sheets were sent to the wrong person. The attorney whose performance is in question. It should be made known to this court that at this writing even medical records and the like, have yet, when properly requested, been supplied. I'm waiting for records held by one law firm to be delivered. They're probably waiting to see what I'm going to present to this court so that they can arrange their files accordingly. This court may think this is a presumptious statement, but if it please, I'll substantiate my thinking on this matter.

(1.) An evidentiary insufficiency existed at the district court level. According to that Circuit's rules the vacation I was looking for should have been immediate.

(2.) If this court looks at everything

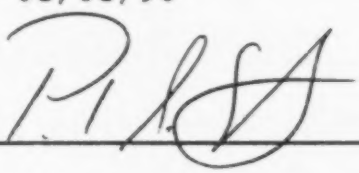
I've presented I'm sure it will see legal subtleties that would have brought about a different outcome in my cases.

(3.) I have successfully completed a sentence wrongly put upon me. For a crime that didn't even exist.

CONCLUSION

The Petition for the Writ of Certiorari should be granted.

Date: 08/08/90

By: 

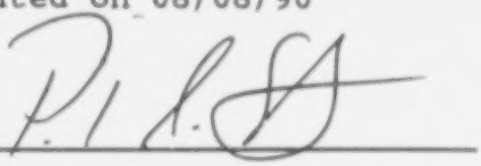
Peter G. Stack

CERTIFICATE OF SERVICE

I, PETER G. STACK, certify that on the 8th day of August 1990, I served three true and correct copies of my "PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT" filed with the Clerk's Office for the Supreme Court of the United States, on the U.S. Court of Appeals for the Seventh Circuit, and the Solicitor General for the United States. By depositing copies of same with, bearing First Class Postage, the U.S. Post Office at Tampa International Airport, Tampa, Florida, addressed to Mr. Thomas F. Strubbe, Clerk, U.S. Court of Appeals, 219 South Dearborn Street, Chicago, Illinois 60604. And a copy to the Solicitor General, Department of Justice, Washington D.C. 20530, sent using express mail article number MB225291561, I declare under the penalty of perjury that the

foregoing is true and correct.

Executed on 08/08/90

By: 

Peter G. Stack

20 Pinetree Court

Palm Harbor, Fl 34683

JUDGEMENT -WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

January 18, 1990

Before

Hon. William J. Bauer, Chief Judge

Hon. Richard D. Cudahy, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Peter G. Stack,

Petitioner-Appellant,

nos. 89-1108

89-1368

89-2461

vs.

United States of America

Respondent-Appellee

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 88 C 2197

Harold A. Baker, Judge

This cause came before the Court for decision on the record from the United States District Court for the Central District of Illinois, Danville, Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgement of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 21, 1989*

January 18, 1990

Before

Hon. William J. Bauer, Chief Judge

Hon. Richard D. Cudahy, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

nos. 89-1108, 89-1368, 89-2461

Peter G. Stack,

Petitioner-Appellant,

vs.

United States of America

Respondent-Appellee

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 88 C 2197

Harold A. Baker, Judge

ORDER

Peter G. Stack, proceeding pro se, appeals the district's court denial of his petition for a writ of habaes corpus pursuant to 28 U.S.C. 2255. Stack also appeals from the district court's dismissal of his "Motion for Correction of Record." We affirm the district court's decision in both appeal's.

---

*After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Circuit Rule 34 (f). Petitioner has filed two identical statements both which requested oral argument. (Stack sent duplicates through

two different delivery services to insure they would be timely filed.) Upon consideration of those statements, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

I.

Stack was indicted on four counts of sending threatening communications in interstate commerce. 18 U.S.C. 875(b)(1982 & Supp. V. 1987). The indictment recited a series of telephone calls in which Stack directed attorney Kristen Fischer to communicate various threats of bodily injury to her client J. Dean Cooper, who owed Stack money. Pursuant to a plea agreement, Stack pleaded guilty to one count, and the other three were dismissed. At the final disposition on May 16, 1984, Stack was sentenced to a five year term of probation which expired on May 15, 1989. no appeal

was filed.

After completing nearly four years of probation, Stack filed a motion to modify the term of his probation, which the district court denied. Then on May 13, 1988, Stack filed pro se a 2255 petition. The district court denied Stack's petition both on the procedural basis that it was an improper collateral attack and on the merits as groundless.
Stack now appeals. 1.

Stack also appeals from an order of the district court, entered June 5, 1989, dismissing his "Motion for Correction of Record" as moot since Stack had completed his probation and was discharged from supervision by the United States. What Stack wants corrected is an entry in the district court docket which states: "[Defendant] appears in person and with

Michael Dorsey, retained counsel." Dorsey stood in for Thomas Bruno who was Stack's retained counsel and who was unable to appear for this particular hearing because of a medical emergency. Because Stack claimed ineffective assistance of counsel in his petition for habeas corpus relief, Stack is concerned that we will be confused about which attorney he is claiming gave him ineffective assistance.

---

1 Stack filed a notice of appeal from the district court's order denying his habeas petition which was docketed No. 89-1108 on January 19, 1989. The district court then filed it's judgement in the habeas action after which the district court clerk refiled Stack's notice of appeal, notwithstanding Fed. R. App. P. 4 (a)(2), which was docketed No. 89-1368 on February 24, 1989. These appeals were consolidated on March 6, 1989. Stack filed a third

notice of appeal on July 3, 1989 from an order of the district court dismissing his "Motion for Correction of Record." The court consolidated this appeal with the first two on December 4, 1989.

II.

As a preliminary matter, we reject the government's contention in it's jurisdictional statement that because Stack's five-year probation expired on May 15, 1989, and he is no longer "in custody" 2 at the time the petition attacking the conviction is filed, the unconditional release of the petitioner will not moot the petition if the petitioner will suffer civil disabilities as a result of that conviction. See Maleng v. Cook, 109 S. Ct. 1923, 1925-26 (1989); Carafas v. LaVallee, 391 U.S. 234, 237-38 (1968). We may presume that collateral consequences exist without canvassing state law. Sibron v. New York,

392 U.S. 40, 55 (1968); United States ex rel. Grundset v. Franzen, 675 F. 2d 870, 873 (7th Cir. 1982). The substantial civil penalties which endure even after a sentence is served ensure that a litigant has a substantial stake in the judgement of conviction which creates a case or controversy for Article III purposes. See Carafas, 391 U.S. at 237.

III.

Although not moot, Stack's claim may be waived because he did not take a direct appeal from his conviction or pursue other post-conviction relief. See Nevarez-Diaz v. United States, 870 F. 2d 417, 422 (7th Cir. 1989). Stack may not raise in a habeas petition a claim that could have been, but was not, raised earlier unless he can show cause for, and prejudice resulting from, his failure to raise the claim. See Norris v. United States, 687 F.2d 899, 901 (7th Cir. 1982).3

Ineffective assistance of counsel may constitute cause for a procedural default. Murray v. Carrier, 477 U.S. 478, 488 (1986).

Stack first argues that counsel rendered ineffective assistance by not suggesting the defense of entrapment. Our review of the record, however, reveals that this was not a viable defense. Cf. Goins v. Lane, 787 F.2d 248, 254 (7th Cir.) ("Counsel is not obligated to present every conceivable theory in support of the defense."), cert. denied 479 U.S. (1986). Stack suggests that Fischer and federal authorities colluded to lure him into making the extortionate phone telephone calls as part of a deal where Fischer would help the government get Stack on extortion in exchange for some favor for her client Cooper. Stack offers no proof other than this assertion and does not explain how

the government and Fischer induced him to make the first call. Simply asking Stack to call back, even if for the purpose of recording the conversation, is not entrapment.

---

2 Stack spent ninety days in prison and five years on probation. Probation constitutes "custody" for habeas corpus purposes. Harts v. Indiana, 7322 F.2d 95, 96 (7th Cir. 1984).

3 Although Stack asserts that Norris does not apply to his 2255 petition, simply saying his is not a collateral attack does not make it so. We have expressly noted that the cause and prejudice requirement of Norris extends to federal habeas petitioners convicted in plea agreements. Williams v. United States, 805 F.2d 1301, 1303-06 (7th Cir. 1986), cert. denied, 481 U.S. 1039 (1987).

See United States v. Manzella, 791 F.2d 1263, 1269 (7th Cir. 1986) (person is not entrapped where government inducement merely affects timing of offense (so to facilitate apprehension) that person would have committed anyway). Counsel's failure to raise the entrapment defense did not constitute deficient performance.

Stack also argues that counsel's preoccupation with a family medical emergency rendered his representation ineffective. Specifically, Stack objects to counsel's having sent a colleague, with whom he was not affiliated, to accompany Stack to the plea hearing. While stand-in counsel was not familiar with Stack's case, no harm was done since the attorney merely sought and was granted a continuance. Therefore, even if such action were deficient performance, it was not prejudicial.

Stack further complains that when he did appear with his retained counsel for the plea hearing, counsel was distracted by the medical emergency and he had not had "real access" to counsel or a "detailed discussion of my plea." Consequently, Stack claims that he did not understand the nature or ramifications of the guilty plea nor did he know the options available to him. The transcript of the plea hearing, however, contradicts Stack's claim. It reveals that he was advised by pleading guilty, the nature of the charge to which he was pleading, the evidence in support of the charge and the penalties he could face. Moreover, Stack indicated that he understood and was astute enough to consult with counsel before answering a number of the court's questions. This court has held that a defendant's statements that his plea is not the

product of threats of coercion carries a strong presumption of veracity. United States v. Darling, 766 F.2d 1095, 1101 (7th Cir.), cert. denied, 474 U.S. 1024 (1985). Furthermore, "[r]ational conduct requires that voluntary responses made by a defendant under oath before an examining judge be binding." Bontkowski v. United States, 850 F.2d 306, 314 (7th Cir. 1988) stack counters that his statements at the hearing were "partially do [sic] to suggestions of counsel." While we have no doubt that this is true, the fact that a person relied on counsel's advice is not sufficient to show that a guilty plea was involuntary. Nor is it sufficient to allege that a person has not had "real access" to nor a "detailed discussion" with his attorney. Without more, we cannot conclude that the access and discussion Stack did have with his trial counsel was deficient and outside the wide

range of reasonable professional assistance.4 See Strickland v. Washington, 466 U.S. 668, 689 (1984) (noting strong presumption that counsel's representation was competent).

Further, even if Stack were able to show cause, he is unable to demonstrate prejudice attributable to his attorney's representation. To satisfy the prejudice prong in the context of a guilty plea, "the defendant must show that..., but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Gargano v. United States, 852 F.2d 886, 890 (7th Cir. 1988) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985). The defendant must provide evidence that would permit this court to assess the claim. Key v. United States, 806 F.2d 133, 139 (7th Cir. 1986). A bare allegation that the defendant would have

pleaded not guilty and gone to trial alone is insufficient. Gargano, 852 F. 2d at 890.

Stack's sole argument on this point is "why would I have plead guilty unless I was instructed to do so." Stack's rhetorical question does not provide us with any evidence to assess his claim. Stack has also failed to show that there is any probability that the result of any further proceeding would be different. He does not suggest that he is not guilty. In fact, appended to Stack's habeas petition are copies of his telephone bill in which he highlighted the extortionate calls.5 We conclude that Stack has not shown cause and prejudice and that his claim is waived.

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4 Stack notes that he asked another attorney, James Whittemore, who handled

his bond hearing and various probation matters, about post conviction relief, but was never told about the possibilities. However, Whittemore's failure to discuss post-conviction relief has no bearing on the issue of Thomas Bruno's effectiveness as trial counsel in Stack's indictment, plea hearing and sentencing.

5 The substance of these calls is preserved on tape.

Haines v. Kerner, 404 U.S. 519 (1972). Our review is limited to a determination of whether the court abused it's discretion. See In re: Childress, 851 F.2d 926, 929 (7th Cir. 1988). There is no confusion in the district court record as to the fact that Bruno was stack's trial counsel. Even though the district court dismissed the motion for the incorrect reason that it was moot, (the

motion was filed while Stack was still on probation), the ultimate disposition was correct; therefore, the district court did not abuse it's discretion.

The Appeals are AFFIRMED.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

March 13, 1990

Before

Hon. William J. Bauer, Chief Judge

Hon. Richard D. Cudahy, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Peter G. Stack,

Petitioner-Appellant,

nos. 89-1108

89-1368

89-2461

vs.

United States of America

Respondent-Appellee

Appeal from the United States District Court for the Central District of Illinois, Danville Division.

No. 88 C 2197

Harold A. Baker, Judge

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by Peter G. Stack, all of the judges on the original panel having voted to deny the same,

It is HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

219 South Dearborn Street

Chicago, Illinois 60604

Date: March 16, 1990

Re: PETER G. STACK,

Petitioner-Appellant,

Defendant-Appellant

vs.

UNITED STATES OF AMERICA

Respondent-Appellee,

Plaintiff-Appellee

U.S.C.A. Nos. 89-1108, 89-1368, & 89-2461

District Court nos. 88-C-2197, 83-20042

(Hon. Harold A. Baker)

Dear Clerk:

Herewith is the mandate of this Court in the above-entitled appeal. "A certified copy of the judgement and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate." (F.R.A.P. 41(a). I am also

returning the original record of your District Court, which was transmitted to this office for use on appeal. Please acknowledge receipt on the enclosed copy of this letter.

Contents of Record to be Returned Later:

1 V pleadings filed herein on 9-13-89.

Lupe Calderon

U.S.C.A. Deputy Clerk

Case No.

IN THE SUPREME COURT OF THE UNITED STATES

May 1990

PETER G. STACK,

Petitioner-Appellant,

VS.

Nos. 89-1108, 89-1368, 89-2461

UNITED STATES OF AMERICA,

Respondent-Appellee,

Appeal from the United States District Court for the Central District of Illinois, Danville Div.

No. 88 C 2197

APPLICATION FOR EXTENSION OF TIME FOR FILING PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Date: 05/31/90

Peter G. Stack

(Pro Se)

20 Pinetree Court

Palm Harbor, Florida

34683

(813) 786-3351

I, Peter G. Stack, applicant, respectfully request under Rule 13.2., of Rules of this Court, an extension of sixty days, to and including August 14, 1990, within which to file a petition for a writ of certiorari in these cases.

The judgement-without oral argument of the court of appeals was entered on January 18, 1990. A copy is attached.

A petition for rehearing was timely filed on January 31, 1990.

On March 13, 1990, the petition for rehearing was denied.

Three days later, March 16, 1990, the mandate was issued. Clearly a deviation from normal procedure wherein pursuant to F.R.A.P. 41.(a) mandate is issued seven days after entry of order denying the petition for rehearing.

Unless extended, the time for filing a petition for writ of certiorari will expire on June 13, 1990. The jurisdiction

of this Court would be invoked under 28 U.S.C. 1254(1).

This case involves an arrest on 10/12/83, and a charging under 18 U.S.C. 875(b). Thirteen days after the arrest I was indicted on four counts of telephonic transmission of threats with intent to extort. The alleged victim never heard the threats.

On 11/18/83, a hearing takes place at which I am not present, and no "Waiver of Defendant's Presence is filed".
A point mentioned in my pleadings, which the district court along with the court of appeals overlooked.

Three days later, 11/21/83, an alleged family illness occurs with my retained counsel's family. He sends an attorney who is neither a partner or associate to plead me guilty. The judge continues the case until 11/23/83. No real access to my retained counsel in the

forty-four hour period following the continuance existed.

On January 11, 1984, I was sentenced pursuant to 18 U.S.C. 4205(c), to 20 years and study under 18 U.S.C.(d).
On May 16, 1984, I was brought back to court and sentenced to five years probation. The court of appeals in the body of it's order of January 18, 1990 fails to mention my incarceration period, but instead chooses to present only a five year probationary term. The incarceration period shows up only as a footnote in it's order. No appeal was filed because I was told it would be fruitless to do so by my then retained counsel. So I did what ninety-nine point six percent of the population would do, I listened to him. When a lawyer gives bad advice the harm falls on the client.
The courts must provide some recourse and protection to defendants. Point in case,

an attorney's mere presence does not constitute counsel. In my 2255 I raised an entrapment defense, as one of many things which could have been presented to the court. The court of appeals in it's order erred in focusing on the fact that he didn't have to present all defenses when the fact of the matter is he presented no defenses. At this juncture you should be made aware of the fact that I made it known to the court that I had not one but two separate sets of copies of his notes regarding my case, which I had requested and paid for. Both verbally to me and in his records there is no evidence that any defenses were suggested or considered.

If it please this court please see materials in support of this request and you will clearly see from where I sit an extension would not only be appreciated but rather necessary to clear this matter

up. It is not that I'm personally important but rather the importance on the whole for other citizens that we examine the question of when is a lawyer responsible for the advice he gives?

Back to the reason the incarceration period was best left as a footnote rather than being placed in the body of the order. On February 14, 1989, I filed a "Motion for Immediate Discharge of Probationer", in it I clearly state I had received no credit for time served, and that pursuant to 18 U.S.C. 4205(c), it clearly states, "The term of the sentence shall run from the date of the original commitment under this section." Probation is a sentence. Only after my completion of the erred sentence did the judge decide the matter...He mooted it on June 5, 1989. Hence a ninety day period in which I was held maliciously and illegally.

On May 13, 1988, while in custody, I filed a pro se 2255 petition. One of the grounds raised was competency of counsel. After a period of one hundred eighty-six days, without an evidentiary hearing, the court denied it. One of the reasons for denial was that I, "may not raise in a habeas petition a claim that could have been, but was not, raised earlier unless he can show cause for, and prejudice resulting from, his failure to raise the claim." At this point please look at the attached letters. They evidence cause and prejudice. A large example of this exists in my P.S.I., which I have been trying to get a copy of for almost two years which just arrived last week on 05/23/90. I didn't get a chance to review it until within an hour of sentencing. In it, and I quote, "there is no written document or contract which would prove the defendant's claim of doing consultation

work for them", this is false. The probation officer was given a copy of the bill before sentencing at which time he said he'd notify the judge and make an addendum. This never happened.
Furthermore, my attorney had knowledge of this bill, since mention of it appears in his notes. This was presented to the court. It evidences an evidentiary insufficiency. I believe this is grounds for an immediate vacation of the sentence pursuant to circuit rules.
A copy of that bill was also given to the attorney who presented the second motion for modification of sentence, the one that appears on the docket. The one presented after serving almost four years of my sentence. The copy of the bill doesn't appear with that motion. So when I filed my 2255 pro se, I attached a copy of that statement along with a memo from an attorney to an attorney on a <u>blank</u> sheet

of paper, no letterhead, just a sheet of paper with typing on it. It contained a statement by the one attorney wherein I say I didn't want to plead guilty yet. It also states I didn't understand the details of the plea. For a period of years, but especially during the last nineteen months or so during the appellate process attorneys have continually- thwarted my attempts to get my hands on my P.S.I., or help me correct it. I even had one attorney who alleged to be a specialist in FOIA requests present as a first step a FOIA request to probation. I believe there is a section in Title 5 that exempts the courts from such requests. Others didn't want to make waves. It would be bad for the future of their practices with regards to their ability to cut deals and such. In my heart I'm sure that none of them wanted to commit career suicide by dealing with the competency of

counsel issue, or allege malpractice on one of their own kind. Because of this, Justice has been thwarted. Once again, the materials in support of this application shore this up. On January 13, 1989, I filed a timely notice of appeal. On January 19, 1989 my appeal was docketed and unknown to me, my transcript information sheet which was due on 01/30/89, was sent to the defense counsel who's performance is in question. He never forwarded same to me. I found out about it by accident....many months later. I've been flying blind.

On January 18, 1990, it was denied. This without any oral argument, and while I was in custody no evidentiary hearing was ever held. I've been released for over a year now after completing an incarceration period along with a five year probationary period successfully. There are many other points I could go

into but I'm sure this Court can see the absolute need for the requested extension since I'm having one hell of a time finding an attorney who will help me. In the event one can't be found I will need the time to prepare, as best I can, the petition. Wherefore it is respectfully requested that the time for filing the petition be extended to and including August 14, 1990.

05/31/90

by:_____

Peter G. Stack
20 Pinetree Court
Palm Harbor, FL 34683
(813) 786-3351

SUPREME COURT OF THE UNITED STATES

No. A-861

Peter G. Stack,

Petitioner

V.

United States

O R D E R

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including August 10, 1990.

John Paul Stevens

Associate Justice of the Supreme Court of the United States

Dated this 5th day of June, 1990.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

PETER G. STACK,

Petitioner,

vs. No. 88-2197

UNITED STATES

OF AMERICA,

Respondent,

ORDER

This is a motion by the petitioner under 28 U.S.C. 2255 for relief in the nature of habeas corpus. On August 4, 1988, the government responded to the 2255 motion and the matter is now ripe for decision.

The petitioner Stack was placed on five years probation following his guilty plea to sending threatening communications in interstate commerce. 18 U.S.C. 875(b)(5). Stack in his petition raises four points: (1) his guilty plea was involuntary

because at the plea he was psychologically unbalanced; (2) he was denied effective counsel with regard to his plea; (3) he was physically exhausted at the time of his guilty plea and therefore was unable to make a knowing plea. (4) his arrest was based upon false information.

None of these grounds has merit. Stack did not appeal from the judgement of the court that was entered after he was sentenced and he may not attack the court's judgement in the collateral proceedings provided under 2255. Williams v. United States, 805 F.2d 1301, 1303-06 (7th Cir. 1986); Norris v. United States, 687 F.2d 899 (7th Cir. 1982).
Moreover the grounds raised by Stack concerning his psychological imbalance and lack of effective counsel are without substance and not borne out by the record in the case. the court remembers the

proceedings and the record shows that nothing indicated Stack's exhaustion or his inability to make a knowing and understanding plea. His lawyer at the time was quite effective and considering Stack's plea of guilty and his statements to the court about his wanting to begin a new life, no sensible competent lawyer would have considered an appeal. See Gargano v. U.S., 852 F.@d 886,889, et seq. (7th Cir. 1988) for discussion of what makes counsel incompetent. Nothing in Mr. Stack's case has the vaguest suggestion that his counsel's representation fell below an objective standard of reasonableness. The court observed Stack during the proceedings at which he plead guilty and remarked that he appeared to be a person in possession of his faculties and knew where he was and what he was doing. Nothing suggests otherwise.

IT IS THEREFORE ORDERED that the petitioner's petition under 2255 is denied.

ENTER this 15th day of November 1988

Harold A. Baker, Chief U.S. District Judge.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

PETER G. STACK,

Petitioner,

vs. No. 83-20042

UNITED STATES

OF AMERICA,

Respondent,

ORDER

On Novemebr 18, 1988, the Clerk received a personal inquiry from the defendant addressed to one of the Deputy Clerks of Court. The letter was docketed and construed as a pro se motion for reconsideration of the court's order of November 15, 1988. Giving the letter that generous interpretation, it raises no basis for reconsideration by the court and reconsideration is denied.

ENTER this 4th day of January, 1989.

Harald A. Baker, Chief U.S. District Judge

In the United States District Court

Central District of Illinois

Case No. 83-20042

Hon. Judge Harold A. Baker, Chief Baker

United States of America

vs.

Peter Stack, defendant

OBJECTION

I the defendant Peter Stack object to the court's order entered on 01/04/89.

At this late time in the proceedings to take something which was written in a clear straight forward fashion as a letter and construe it in a loose and extremely arbitrary fashion as a motion thereby suggesting the letter to be be ambiguous shows the order itself to be ambiguous. Since my letter, dated 11/17/88, to Judy Clark has been construed as a motion this leads to certain questions, was this motion considered by the court to be one under F.R.C.P. Rule

50(b), or perhaps under Rule 52(b), or was it maybe Rule 59? Does it have a suspending effect on my time in which to file a notice of appeal.

If the court were to look at my "PETITIONER'S MOTION FOR EXPANSION OF RECORD", filed with the court on 08/12/88, clearly evidenced is my recently gained knowledge of a proper form for a motion. At a point earlier in time, with respect to my case in this court, such generous interpretations of letters may have been welcomed. Then threats and fraud's perpetrated on me and mine would have been dealt with rather than be allowed to continue..... obviously with the court's and government's knowledge and what appears to be approval.

Through my own research and questioning I have done everything up to

this point on my own, and am currently trying to enlist aid in my appeal. If I were to have motioned the court for reconsideration of its order, it would have been based on the fact I wasn't granted an evidentiary hearing. But, simply put, why would I have wanted to do that?

By: Peter G. Stack

In the United States District Court

Central District of Illinois

Case No. 83-20042

Hon. Judge Harold A. Baker, Chief Baker

United States of America

vs.

Peter Stack, defendant

MATERIALS AND MEMORANDUM IN SUPPORT OF OBJECTION TO ORDER IN MOTION UNDER 28 U.S.C. SECTION 2255

I the defendant Peter Stack, in support of my objection filed with your court on 01/11/89, to your order filed on 01/04/89 with regards to my Motion under 28 U.S.C., Section 2255 present the following exhibits to clear any ambiguity that might exist.

(1.) With respect to statement made in question form at end of objection, "But, simply put, why would I have wanted to do that?", please note (exhibit Z), one

letter dated 02/19/88, from Harold A. Baker, addressed to Peter G. Stack. It clearly evidences prejudice on the court's part. Taken at best it appears to show an incompetent law clerk possibly hired by the judge who didn't do his/her research and verify facts. At worst it shows a clear attempt by the court to disorient and confuse me in my attempts to do what the court ordered me to do, "that you are law abiding". Finally (exhibit Z) shows a clear attempt at blocking due process, "It is a waste of your time and money to continue to write me." This after going to U.S. Probation, the FBI, and a U.S. Attorney with a problem involving a threat to me and a fraud being perpetrated against me and mine involving a deprivation of property totally unnecessary in the purposes of effecting my sentence. The threat to me was formally filed with the court on

06/13/88, along with Exhibits, (H & I), accompanying an objection which as of this writing has yet to be decided. My conclusions from the court's actions is that an attorney is judged by separate standards and a threat made by an attorney is not to be taken seriously and that they are not accountable for their actions. Therefore, nothing an attorney says should be taken seriously. (2.) Since U.S. Probation is, as was implied to me in writing on 10/04/88 by one Richard Carroll, U.S. Probation Officer, Danville, Illinois, part of the U.S. Courts, further prejudice and attempts to block due process exist as evidenced by (Exhibit Z1), letter dated 06/10/88, to attorney Elizabeth Bevington, in it reference is made to a letter from U.S. Probation Office in the Central District of Illinois, I quote, "Mr. Stack would not be granted an early discharge

in his case, due to the seriousness of the offense behavior."

This is in complete opposition to what was determined by my classification study done in Tallahassee, Florida. Again, I quote, "He is a 31-year-old whose behavior in the evaluation report of the classification study from Tallahassee is excused because of his immaturity and his poor judgement." U.S. Probation is not qualified to make psychological behavior determinations. (Exhibit Z1) clearly shows a prejudicial attitude by the court & Gov't. showing it's decisions not to be impartial.

Imagine how it feels to know that every legal remedy I had available to me would be useless because of a predetermined decision which precluded any impartial judgement on my case. Now after bringing all this forward I will never receive any unprejudicial or unbiased treatment from

the Courts, Government, or its' agencies. That is why I didn't request an evidentiary hearing.

Even the order filed by the court on 11/15/88, reeks of protecting an attorney from a possible malpractice suit, which I stated I was considering to one of the clerks of this court during a telephone conversation.

By: Peter G. Stack

NOS. 89-1108 & 89-1368

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS

PETER G. STACK

Petitioner-Appellant,

vs.

No. 88-C-2197

Harold A. Baker, Judge.

UNITED STATES OF AMERICA

Respondent-Appellee.

Appeals from the U.S. District Court

for the Central District of Illinois,

Danville Division

MOTION

I, Peter G. Stack, Petitioner-Appellant, in the above docketed appeal move this court to strike from the record the Respondent-Appellee's citation of Ohrynowicz v. United States, 542 F. 2d 715 (7th Cir.) cert. denied 429 U.S. 1027 (1976), in her "MEMORANDUM OF LAW"

complying with the court's order of 07/26/89, ordering her to discuss the relevance of Maleng v. Cook, 109 S.Ct. 1923, 1925-26 (1989).

Grounds being as follows, Ohrynowicz v. United States, 542 F. 2d 715 (7th Cir.) cert. denied 429 U.S. 1027 (1976), doesn't appear anywhere in Maleng v. Cook, 109 S.Ct. 1923, 1925-26 (1989).

I filed a 2255.

Once again the U.S. Attorney is trying to lead this court down the wrong path by delaying these proceedings and bringing into play materials that are not truly relevant. None of her citations carry the weight of a lawyer's memo as the one attached to this motion, and the original 2255 motion filed in the District Court which should have resulted in an evidentiary hearing but didn't due to the extreme prejudice afforded me by that court. Furthermore, the U.S. Attorney

is clearly trying to convolute this proceeding in order to obscure the fact that at best this whole matter was a Title 15 problem that became blown out of proportion and into an alleged Title 18 violation by an attorney who was trying to cut a deal for her client with Federal authorities. I presented evidence of this in my 2255 pleadings in which I had to motion the district court to expand the record. Had that court seen this evidence which my attorney held back there would not have been a trial. I would have sued the government for entrapment. Clearly an evidentiary hearing should have been ordered by the district court, but let's face it, G. Dean Cooper, Kris Fischer, Thomas Bruno, Frances Hulin, Brian Silverman, Michael Dorsey, Harold Baker, Bruce L. Levin, etc., etc., all attended the same school in the same town. Therefore it's not hard to believe that

this is a continuation of a process of convolution and stalls by multiple attorneys involved in this case who all attended the same University. In a small fashion, but present none the less, is this school spirit, as evidenced by my attached copy of the transcripts of my 11/09/83 "ARRAIGNMENT". Also covered in my pleadings are various attorney's and U.S. Probation's acts of withholding evidence, manipulating the record, the court's refusal to correct the record to conform with the truth, and evidence presented to them of true Title 18 violations perpetrated against me and mine, all the while doing nothing. I pray this court grant this motion.

08/13/89

By:_____

Peter G. Stack

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

August 18, 1989

By The Court:

Nos. 89-1108 and 89-1368

PETER G. STACK,

Petitioner-Appellant,

vs.

UNITED STATES OF AMERICA

Respondent-Appellee

Appeals from the United States District Court for the Central District of Illinois

Danville Division

No. 88 C 2197

Judge Harold A. Baker

This matter comes before the court for it's consideration of the following documents:

1. "MOTION TO DISMISS APPEAL" filed herein on June 7, 1989, by counsel for the appellee.

2. "OBJECTION TO GOVERNMENT'S MOTION TO DISMISS APPEAL" filed herein on July 12, 1989, by the pro se appellant.

3. "MEMORANDUM OF LAW" filed herein on August 14, 1989, by counsel for the appellee.

4. "MOTION TO STRIKE" filed herein on August 15, 1989 by the pro se appellant.

In its MEMORANDUM OF LAW filed herein on August 14, 1989, the appellee suggests that it's MOTION TO DISMISS filed on June 7, 1989, is grounded on an innaccurate premise. Accordingly,

IT IS ORDERED that the MEMORANDUM OF LAW is construed as a motion to withdraw the appellee's motion to dismiss and is hereby GRANTED.

IT IS FURTHER ORDERED that the MOTION TO STRIKE is DENIED as moot.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago, Illinois 60604

By The Court:

PETER G. STACK

Petitioner-Appellant,

Cross-Defendant-Appellant,

Nos. 89-1108,

89-1368, v.

89-2461

UNITED STATES OF AMERICA,

Respondent-Appellee,

Cross-Plaintiff-Appellee.

Appeals From the United States District Court for the Central District of Illinois

Danville, Division.

Nos. 88-C-2197, 83-CR-20042

Harold A. Baker, Judge

This matter comes before the court for it's consideration upon the following documents:

1. "Motion To Consolidate Appeals" filed

herein on October 27, 1989, by the pro se petitioner-appellant, cross-defendent-appellant.

2. "Motion For Stay Of Proceedings" filed herein on November 28, 1989, by the pro se petitioner-appellant, cross-defendant-appellant.

On consideration thereof,

IT IS ORDERED that the "Motion To Consolidate Appeals" is GRANTED and these appeals are consolidated for disposition. Briefing in these consolidated appeals is completed. Accordingly,

IT IS FURTHER ORDERED that the "Motion For Stay Of Proceedings" is DENIED as moot.